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16 **UNITED STATES BANKRUPTCY COURT**

17 **DISTRICT OF NEVADA**

18 In re

19 Case No. BK-23-10423-mkn

20 CASH CLOUD, INC.,
21 dba COIN CLOUD,
22 Debtor.

23 Chapter 11

24 **DEBTOR'S OBJECTION TO
25 ADMINISTRATIVE EXPENSE CLAIM
26 OF AVT NEVADA, L.P.**

27 Hearing Date: October 19, 2023
28 Hearing Time: 10:30 a.m.

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30 Cash Cloud, Inc. (the “Debtor”), debtor and debtor in possession in the above-referenced
31 chapter 11 bankruptcy case (the “Chapter 11 Case”), by and through its undersigned counsel, Fox
32 Rothschild LLP, hereby submits this objection (the “Objection”) to the administrative expense claim
33 [ECF No. 887] (the “AVT Admin Claim”) filed by AVT Nevada, L.P. (“AVT”), asserting that AVT
34 is entitled to rent for the Debtor’s postpetition use of certain equipment (the “Equipment”) pursuant
35 to that certain “Master Lease Agreement” dated June 5, 2023 (the “Master Lease Agreement”)
36 attached thereto as Exhibit A.

1 The Objection is based upon the grounds that: (a) AVT has already filed a secured claim
 2 [POC No. 38] (the “AVT Secured Claim”) based on the same Master Lease Agreement (attached
 3 thereto), and has asserted a perfected security interest in the Equipment pursuant to UCC-1 Financing
 4 Statements (also attached thereto); (b) AVT has been treated as a secured creditor with a lien on the
 5 proceeds of the Equipment pursuant to the Sale Order;¹ (c) AVT has been treated as a secured creditor
 6 under the Debtor’s Amended Plan;² and, therefore, (d) the Debtor has no liability to AVT for rent of
 7 the Equipment, since the Master Lease Agreement was for secured financing of the Equipment, not
 8 a lease of the Equipment.

9 The Objection is made pursuant to Section 502 of chapter 11 of Title 11 of the United States
 10 Code (as amended, the “Bankruptcy Code”), Rule 3007 of the Federal Rules of Bankruptcy Procedure
 11 (the “Bankruptcy Rules”), Rule 3007 of the Local Rules of Bankruptcy Practice (the “Local Rules”),
 12 the points and authorities contained herein, the *Declaration of Brett A. Axelrod* (the “Axelrod
 13 Declaration”) filed in support hereof, the pleadings and papers on file with the Court, and any
 14 argument of counsel the Court may wish to entertain at the hearing on this matter.

15 As required by Local Rule 3007(a)(4), a copy of the first page of the AVT Admin Claim is
 16 attached hereto as **Exhibit 1**.

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24 ¹ *See Order: (A) Confirming Auction Results; (B) Approving the Sale of Certain of Debtor’s
 25 Assets to Heller Capital Group, LLC, and Genesis Coin, Inc., Free and Clear of Liens, Claims,
 26 Encumbrances, and Other Interests; (C) Authorizing the Assumption and Assignment of Certain of
 27 the Debtor’s Executory Contracts and Unexpired Leases Related Thereto; and (D) Granting Related
 Relief* [ECF No. 795] (the “Sale Order”), attached to the Axelrod Declaration as **Exhibit A** thereto.

28 ² *See Debtor’s First Amended Chapter 11 Plan of Reorganization Dated August 1, 2023* [ECF
 No. 996] (the “Amended Plan”).

Based on the foregoing, the Debtor requests that the Court enter an Order, substantially in the form attached hereto as **Exhibit 2**: (i) sustaining the Objection; (ii) disallowing the AVT Admin Claim; and (iii) granting such other and further relief as the Court may deem just and proper.

DATED this 19th day of September 2023.

FOX ROTHSCHILD LLP

By: /s/Brett A. Axelrod
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POINTS AND AUTHORITIES

I.

BACKGROUND

1. On February 7, 2023 (the “Petition Date”), Debtor filed its voluntary petition for relief under chapter 11 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner and the Debtor remains a debtor-in-possession, pursuant to §§ 1107 and 1108.

2. On February 17, 2023, the Office of the United States Trustee appointed [Docket No. 131] the Official Committee of Unsecured Creditors (the “Committee”), as amended [Docket No. 177] on February 28, 2023.

3. The factual background relating to the Debtor's commencement of the Bankruptcy Case is set forth in detail in the *Omnibus Declaration of Christopher Andrew McAlary in Support of Emergency First Day Motions* [Docket No. 19] (the “Omnibus Declaration”) and is incorporated for all purposes herein by this reference.

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II.2
THE AVT SECURED AND ADMIN CLAIMS3
4. On March 27, 2023, AVT filed the AVT Secured Claim, asserting a secured claim in
the amount of \$1,314,335.00, based on its security interest in the Equipment described in the Master
Lease Agreement, and perfected by the UCC-1 Financing Statements (both attached thereto).5. On June 19, 2023, the Debtor filed its *Motion for Order (A) Confirming Auction*
Results; (B) Approving the Sale of Certain of Debtor's Assets to Heller Capital Group, LLC and
Genesis Coin, Inc. Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (C)
Authorizing the Assumption and Assignment of Certain of the Debtor's Executory Contracts and
Unexpired Leases Related Thereto; and (D) Granting Related Relief [ECF No. 714; as amended by
ECF No. 730] (the “Sale Motion”), seeking approval of the sale of, among other things, substantially
all of the Debtor’s digital currency kiosks (including but not limited to the Equipment), free and clear
of all liens, claims, interests and encumbrances.6. On June 28, 2023, the Court held a hearing on the Sale Motion, at which AVT made
an oral objection to the sale of the Equipment on the basis that it was subject to a lease (the “AVT
Oral Objection”). The Court overruled the AVT Oral Objection on the record because AVT had filed
the AVT Secured Claim, conceding that the Master Lease Agreement was secured financing (not a
lease). The Court also overruled the AVT Oral Objection in the Sale Order. *See* Axelrod Declaration,
¶¶ 3-4 & Exhibit A thereto (Sale Order, p. 3, ¶ M).7. The Sale Order treated AVT as a secured creditor, with a lien on the proceeds of the
Equipment included in the purchased assets. *See* Axelrod Declaration, ¶ 5 & Exhibit A thereto
(Sale Order, p. 6, ¶ 14) (“The prepetition and postpetition Liens of . . . AVT Nevada L.P. (“AVT”)
. . . shall immediately attach to the proceeds of the Sales in the same nature, validity, priority,
extent, perfection, and force and effect that such secured claims had on the Purchased Assets
immediately prior to Closing”).8. On July 19, 2023, AVT filed the AVT Admin Claim, asserting an administrative
expense claim in an amount of \$262,719.30 for post-petition rent of the Equipment used in the
operation of Debtor’s business. The AVT Claim attaches a copy of the Master Lease Agreement.

1 9. On August 1, 2023, the Debtor filed the Amended Plan, treating the AVT Secured
2 Claim as a secured claim. *See* Amended Plan, pp. 26-27, § 3.2(f).

3 10. Debtor objects to the AVT Admin Claim because AVT has already taken the position
4 that the Master Lease Agreement is a secured financing transaction of the Equipment (not a lease).
5 *See AVT Secured Claim. AVT cannot have it both ways.*

6 11. As set forth more fully below, the AVT Admin Claim should be disallowed in its
7 entirety.

III.

LEGAL ARGUMENT

10 The burden of proving an administrative expense claim is on the claimant. *In re DAK*
11 *Industries, Inc.*, 66 F.3d 1091, 1094 (9th Cir. 1995). For the reasons set forth below, AVT fails to
12 carry its burden with respect to the AVT Admin Claim.

13 “Businesses that do not pay up front for assets may acquire them via unsecured debt, secured
14 debt, or lease; in each event the business pays over time. Similar economic function implies the
15 ability to draft leases that work like security agreements, and secured loans that work like leases.”
16 *United Airlines, Inc. v. HSBC Bank USA, N.A.*, 416 F.3d 609, 610 (7th Cir. 2005).

17 Yet the Bankruptcy Code distinguishes among these devices. A lessee must either assume the
18 lease and fully perform all of its obligations, or surrender the property. 11 U.S.C. § 365. A borrower
19 that has given security, by contrast, may retain the property without paying the full agreed price. The
20 borrower must pay enough to give the lender the economic value of the security interest; if this is less
21 than the balance due on the loan, the difference is an unsecured debt. *See* 11 U.S.C. §§ 506(a) &
22 1129(b)(2)(A).

23 The Bankruptcy Code was drafted against the backdrop of the Uniform Commercial Code,³
24 which (as adopted by Nevada) makes clear that a “a transaction in the form of a lease” is not a lease,

³ “The legislative history’s description of the parameters the courts should use is consistent with those in the Uniform Commercial Code definition of ‘security interest’ in section 1-201(37) and the U.C.C. rules for distinguishing a lease from a security interest in section 1-203” 3 *Collier on Bankruptcy* ¶ 365.02 (16th ed. 2022 rev.).

1 but creates a security interest instead, if it meets certain criteria.⁴ In other words, a “lease” transaction
 2 is either a true lease or a secured financing transaction, but not both.

3 AVT has taken the position that the Master Lease Agreement is a secured financing
 4 transaction in the AVT Secured Claim, AVT has been treated as a secured creditor in the Sale Order,
 5 and AVT has been treated as a secured creditor under the Amended Plan. The Court overruled AVT’s
 6 objection to the Sale on the grounds that AVT cannot now claim to be a lessor instead. The Debtor
 7 submits that the Court should disallow the AVT Admin Claim on the very same grounds.

8 **IV.**

9 **RESERVATION OF RIGHTS**

10 The Debtor hereby reserves its right to object in the future to the AVT Admin Claim on any
 11 ground, and to amend, modify, and/or supplement the objection, including, without limitation, to
 12 object to amended or newly filed claims. Separate notice and hearing will be scheduled for any such
 13 objection.

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 20 ⁴ See NRS § 104.1203(2):

21 A transaction in the form of a lease creates a security interest if the consideration that
 22 the lessee is to pay the lessor for the right to possession and use of the goods is an
 23 obligation for the term of the lease and is not subject to termination by the lessee, and:

24 (a) The original term of the lease is equal to or greater than the remaining economic
 25 life of the goods;
 26 (b) The lessee is bound to renew the lease for the remaining economic life of the goods
 27 or is bound to become the owner of the goods;
 28 (c) The lessee has an option to renew the lease for the remaining economic life of the
 29 goods for no additional consideration or for nominal additional consideration upon
 30 compliance with the lease agreement; or
 31 (d) The lessee has an option to become the owner of the goods for no additional
 32 consideration or for nominal additional consideration upon compliance with the lease
 33 agreement.

V.

CONCLUSION

For the reasons set forth herein, the Debtor respectfully requests that the Court enter an Order substantially in the form attached hereto as **Exhibit 2**: (i) sustaining the Objection; (ii) disallowing the AVT Admin Claim in its entirety; and (iii) granting the Debtor such other and further relief as the Court deems just and proper.

Dated this 19th day of September 2023.

FOX ROTHSCHILD LLP

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EXHIBIT 1

FOX ROTHSCHILD LLP
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In re: Cash Cloud, Inc.		Case No. 23-10423-mkn	PLEASE NOTE: <i>This form should only be used to assert an administrative expense claim that arose or accrued after February 6, 2023, but before July 21, 2023.</i>
Claimant: AVT Nevada, L.P.		<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.	
Name of Creditor and Address: the person or other entity to whom the debtor owes money or property AVT Nevada, L.P. c/o Justin M. Mertz Michael Best & Friedrich LLP 790 N. Water St., Ste. 2500 Milwaukee, WI 53202		THIS SPACE IS FOR COURT USE ONLY	
Creditor Telephone Number () 414.271.6560			
Name and address where notices should be sent (if different from above): (Same as above)			
Creditor Telephone Number () (same as above)			
Account or other number by which creditor identifies debtor: N/A		Check here if this claim: <input type="checkbox"/> replaces <input type="checkbox"/> amends a previously filed claim, dated:	
1. Basis for Claim: Post-petition use of leased equipment in operation of Debtor's business (see Addendum).			
2. Date debt was incurred: Continuous and ongoing			
3. Brief description of claim, including the basis for the priority nature of the claim (if any) (attach additional information): Contract rate for post-petition use of deployed leased equipment in operation of Debtor's business (see Addendum). Priority is pursuant sec. 503(b)(1)(A), as entitled to priority under sec. 507(2), of the Bankruptcy Code.			
4. Total Amount of Administrative Claim: \$ 262,719.30			
<input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.			
5. CREDITS: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.			
6. SUPPORTING DOCUMENTS: <u>Attach copies of supporting documents</u> , such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court documents, mortgages security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, explain. If the documents are voluminous, attach a summary.			
7. DATE-STAMPED COPY: To receive an acknowledgement of the filing of your claim, enclose a stamped self-addressed envelope and copy of this proof of claim.			
The original of this completed proof of claim form must be filed electronically on or before 5:00 p.m. Prevailing Pacific Time on July 20, 2023 through the Court's CM/ECF System or mailed to the address below <u>so that it is received</u> by the Clerk of the Bankruptcy Court for the District of Nevada at the address below on or before 5:00 pm Prevailing Pacific Time on July 20, 2023.			THIS SPACE IS FOR COURT USE ONLY
Clerk of the United States Bankruptcy Court, District of Nevada 300 Las Vegas Blvd. South, Las Vegas, NV 89101			
DATE 07/18/2023	SIGNATURE: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any. /s/ Justin M. Mertz, Partner, Michael Best & Friedrich LLP, Ph: 414.271.6560		

Penalty for presenting fraudulent claim is a fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 AND 3571.

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Counsel for Debtor

17 UNITED STATES BANKRUPTCY COURT
18
19

DISTRICT OF NEVADA

20 In re
21 CASH CLOUD, INC.,
22 dba COIN CLOUD,
23 Debtor.
24

Case No. BK-23-10423-mkn

Chapter 11

**ORDER SUSTAINING DEBTOR'S
OBJECTION TO ADMINISTRATIVE
EXPENSE CLAIM OF AVT NEVADA,
L.P.**

25 Hearing Date: October 19, 2023
26 Hearing Time: 10:30 a.m.
27
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1 This Court having reviewed and considered the objection (the “Objection”) of Cash Cloud,
 2 Inc. (the “Debtor”), to the administrative expense claim [ECF No. 887] (the “AVT Admin Claim”)
 3 filed by AVT Nevada, L.P. (“AVT”) pursuant to Section 502 of chapter 11 of Title 11 of the United
 4 States Code, Rule 3007 of the Federal Rules of Bankruptcy Procedure, and Rule 3007 of the Local
 5 Rules of Bankruptcy Practice; and the Debtor having appeared by and through its counsel, Fox
 6 Rothschild LLP; and the Court having considered the arguments of counsel at the hearing on the
 7 Objection held on October 19, 2023; and the Court having stated its findings of fact and conclusions
 8 of law on the record at the hearing on the Objection, which findings of fact and conclusions of law
 9 are incorporated herein by this reference in accordance with Fed. R. Bankr. P. 7052; and for good
 10 cause appearing therefor,

11 **IT IS HEREBY ORDERED** that the Objection is SUSTAINED.

12 **IT IS FURTHER ORDERED** that the AVT Admin Claim is hereby disallowed in its
 13 entirety; and

14 **IT IS FURTHER ORDERED** that this Court shall, and hereby does, retain jurisdiction with
 15 respect to all matters arising from or related to the implementation of this Order.

16
 17 Prepared and Respectfully Submitted by:

18 **FOX ROTHSCHILD LLP**

19 By: /s/Brett A. Axelrod

20 BRETT A. AXELROD, ESQ.

21 Nevada Bar No. 5859

22 NICHOLAS A. KOFFROTH, ESQ.

23 Nevada Bar No. 16264

24 ZACHARY T. WILLIAMS, ESQ.

25 Nevada Bar No. 16023

26 1980 Festival Plaza Drive, Suite 700

27 Las Vegas, Nevada 89135

28 *Counsel for Debtor*

CERTIFICATION OF COUNSEL PURSUANT TO LOCAL RULE 9021

In accordance with Local Rule 9021, counsel submitting this document certifies as follows:

- The Court has waived the requirement of approval in LR 9021(b)(1).
- No party appeared at the hearing or filed an objection to the motion
- I have delivered a copy of this proposed order to all counsel who appeared at the hearing, any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below:
- I certify that this is a case under Chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of the order.

#

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